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**Received**

May 19, 2007

**MAY 22 2007**

Michigan Court Forms Committee  
Probate Section  
Supreme Court Administrative Office  
P.O. Box 30048  
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State Court Administrative Office

RE: Revision of PCM 201 "Petition/Application for Hospitalization"

Dear Committee Members:

The decision of the SCAO to combine the mental health petition and application forms into one form in PCM 201 should be reconsidered. The petition and application process are different procedures in the Mental Health Code (MHC) placed in different sections of the MCH and designed for different uses. Combining them into one form erodes the civil rights of individuals subjected to involuntary mental health detentions and treatment and creates confusion in the medical and legal communities.

The MHC created the petition process in sections 434 through 439 for only one purpose that always requires court involvement. The purpose is to obtain a court order for an involuntary mental health examination. It is necessary to obtain two clinical certificates to detain a person for a commitment hearing. MCL 330.1435; 330.1430; 330.1431. Where one or no examinations can be conducted on a dangerously mentally ill individual, the MHC authorizes any individual to file a petition with the court to obtain them. With a petition, in order to facilitate the evaluations, additional orders can be obtained, including police involvement in the transport of an unwilling subject, MCL 330.1436, and involuntary immediate short-term hospitalization. MCL 330.1438.

The MCH uses the application process for a variety of other purpose which are not always involuntary and sometimes do not involve the court. Usually the individual is present at the treatment facility either voluntarily seeking treatment or in police custody. These are the situations where an application and not a petition are provided for in the MCH:

1. *Initiating police protective custody* MCL 330.1427(1). The Attorney General has given an opinion that only a peace officer who takes a person into protective custody can execute the sworn application to detain an individual for mental health screening. Atty Gen Op 7127 (Apr. 7, 2003). This contrasts with the other uses for a hospital application outside the police custody context where the application can be executed by any adult. MCL 330.1424(2). Federal constitutional law requires an officer to have probable cause to take the person into

custody, which sometimes this must be under oath, which coincides with the constitutionally compliant definition of protective custody in section 427 of the MCH and the oath requirement in section 424(2). The officer's application then goes with the officer and the individual to the place where the initial mental health screening is done. MCL 330.1427(1). Where the person goes from there depends on the preadmission screening unit's directions to the officer. *Id.*

2. *Detention Pending Commitment Hearing* MCL 330.1431(1) An application is the document the hospital uses to notify the court that two clinical certificates have been obtained. This starts the involuntary commitment process. The MHC states that the hospital's application shall "serve as a petition for a determination that an individual is requiring treatment". MCL 330.1452. The commitment hearing must then be conducted within 7 business days. *Id.*

3. *Formal voluntary hospitalization* MCL 330.1415 Unlike an informal request from a patient for hospitalization under MCL 330.1411, the formal voluntary admission requires more. It requires both an application by the patient for hospitalization and a clinical approval by the hospital director. So this type of application is filed with the hospital – not with a court. No clinical certificates are required. Yet the current court form of "application/petition" assumes court involvement is being requested (§ 7) and includes the requirement for attaching clinical certificates.

4. *Converting a formal voluntary hospitalization into an involuntary hospitalization* MCL 330.1420 If a person in a hospital under a formal voluntary admission seeks a discharge under section 419, the hospital has three days to decide if it wants the person to stay in the hospital. During those three days the hospital must get the necessary civil commitment paperwork to the court to initiate the commitment process. This procedure is initiated by an application from the hospital director "or other suitable person" with two clinical certificates that will hold the individual until the commitment hearing within 7 days.

5. *Hospitalization at a state hospital* MCL 330.1423 The MCH does not make this clear, but a court case suggests that the application process in section 423 is for admitting a person to a state psychiatric hospital "a hospital designated by the department") and not for involuntary admission to the private hospital in that case. *Hinkelman v Borgess Medical Center*, 157 Mich App 314, 325 (1987).

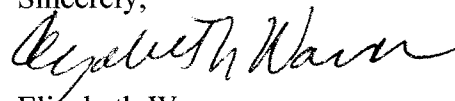
Not only are there different uses for the petition and application, but they also have significantly different legal requirements. An application for hospitalization, unlike a petition for an examination, must be sworn. MCL 330.1424(2). A petition for involuntary mental health evaluation with no certificate can be filed with the court if it is accompanied by an affidavit of reasonable efforts to obtain the required certificate. MCL 330.1434(3). With an application for hospitalization, the reasonable efforts statement is not required to be in an affidavit to get a court order for the evaluation, probably because the application itself is sworn. MCL 330.1428. Another important difference is an application for hospitalization, unlike a petition for an evaluation, requires CMH approval. MCL 330.1423; *Hoffman v Warden*, 184 Mich App 328, 334 (1990). Applications for hospitalizations can be filed with a court or with a hospital.

Petitions are always filed with a court. Finally, there are different time limitations on the involuntary evaluations. A police protective custody application requires the initial screening by CMH within two hours except in extraordinary circumstances. MCL 330.1429(2). If the screening unit determines the person brought in by the police requires further professional evaluations, then the 24 hour period starts to obtain them. MCL 330.1427(1); 330.1429(1). With a court ordered evaluation on a petition, the maximum detention period is just 24 hours to obtain the one or two clinical certificates needed to hold the person for a commitment hearing. MCL 330.1435(3).

Individual liberties are at stake when the court forms do not recognize the substantial differences between the application and petition processes. The current form creates confusion by joining the application and petition processes in one form that does not accurately reflect the legal requirements for either of them. The Mental Health Code does not use these two procedures interchangeably. They have different requirements that directly affect the due process procedures afforded those subjected to a temporary involuntary mental health evaluation initiated by a police officer, the patient, a hospital director, or someone else. The current joint form blurs the distinction between obtaining enough professional opinions to determine if hospitalization is needed and those situations where the need for hospitalization is already established by two written expert opinions.

I urge the committee to examine the Mental Health Code in detail to determine what purposes and procedures the Legislature intended for the application and petition processes. If they are different, there should be separate forms. The application form should include the myriad uses of the application process from police protective custody to other types of mental health hospitalization provided for in the Mental Health Code that can be initiated by others. Then the petition process would be appropriately limited to requests by any adult for court involvement to secure mental health evaluations where there is a concern that the person needs court ordered involuntary mental health treatment.

Sincerely,



Elizabeth Warner